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Supreme Court of the United States

OCTOBER TERM, 1963

No. 737

J. J. (JAKE) HARDAWAY and KATIE MAE HEIDELBERG,
Petitioners

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

J. J. (JAKE) HARDAWAY,
Petitioner

KATIE MAE HEIDELBERG,
Petitioner

Pro se (pending engagement of Washington counsel)

DEQUINCY V. SUTTON,
214 Dixie Towers,
Meridian, Mississippi.
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Petitioners, praying for a writ of certiorari to the United States Court of Appeals for the FIFTH Circuit, to review the decision there affirming their conviction in the United States District Court for the Southern District of Mississippi, Eastern Division, show and state,—

OPINION BELOW

The *per curiam* decision of the Court of Appeals, 321 F.(2d) 89, is copied hereinafter as *Exhibit "A"* in the appendix.

JURISDICTION

Jurisdiction of this Court is invoked under authority in the provisions of 28 USC 1254.

Petition for rehearing below was denied on December 9, 1963 and stay of mandate to permit this petition was entered on December 17, 1963; order of denial for rehearing, and the stay of mandate, are copied hereinafter as *Exhibit "B"* and *Exhibit "C"*, respectively, in the appendix.

QUESTIONS PRESENTED

I. Is the granting of this petition important to criminal jurisprudence?

II. ~~Did~~ Were the rulings and instructions from the trial judge so clearly erroneous in law, and did they so invade the province of the jury, as to prejudice substantial rights of defendants in the trial of their case?

III. Could the record withstand timely motion for new trial?

IV. Did the petitioners receive a fair trial?

STATUTES INVOLVED

The indictment on which petitioners were tried charged violation of *18 USC 286* as a conspiracy with each other, and with seven named but not indicted co-conspirators, to defraud the United States by false and fraudulent Social Security Benefit claims.

Closely connected with that statute, and essential to its application in this case, is the Social Security Act, as it stood amended at trial time, particularly, Sections 410 and 411 of that Act *(42 USC 410(f) and 411(a)(7)(B) —Second Paragraph, second sentence and sub-portion (i)).*

STATEMENT

Petitioners were convicted and, after denial of their motion for new trial were sentenced to pay fines of $3,500.00 and three years under probation on suspended sentence.

The 2½-day trial was commenced (R. 15) by the trial judge advising the jurors:—". . . It is a criminal action where the government charges those colored people did some things in violation of the Social Security Act . . ."

Petitioners are brother and sister and from the field of school teaching. (R. 378-82)

The gist of the prosecution effort was undertaking to show that petitioners went among the "aged colored people" (R. 20) of their community and induced them to file false and fraudulent Social Security qualifications for old-age insurance, on basis of self-employed income which they did not have. If qualified, the other persons would be so under the 1954 farm income amendment, the previous provisions of the Act not permitting income from farming as qualifying self-employment income.

The gist of the defense was to show that the petitioners, or one of them, did prepare the tax returns and later learned that it was for qualifying purposes with Social Security Administration. Petitioner Heidelberg, the sister, prepared some 40 such returns, always at the request of the taxpayer and from data furnished by them.

The investigation was started when Internal Revenue Service noted petitioner Hardaway obtaining a number of forms and, later, filing a number of returns bearing the name of petitioner Heidelberg as the preparer.

Three of those named but not indicted as co-conspirators, testified they believed when filing and believed when testifying that their claims were just and they were entitled to them. No other named co-conspirators testified. (Cotton, R. 122-66; Buckley, R. 237-99; Hunter, R. 450-58) No other alleged co-conspirator testified.

Petitioners noted numerous objections during the trial, and exceptions to instructions given or refused. The instructions required 34 pages, more or less, of transcript space. (R. 479-512)

The FIFTH Circuit, affirming the conviction, found without comment or discussion: (1) Substantial evidence to support the verdict; (2) No reversible error in rulings of the trial judge; and (3) Petitioners received a fair trial.

AUTHORITY FOR SEEKING THE WRIT

I. Importance to criminal jurisprudence

A. The trial judge, over objection, admitted into evidence, and without evidence of falsity, the alleged fraudulent returns of two persons named in the indictment as co-conspirators but dead at trial time, and similarly admitted returns prepared by another person, without testimony on character of the return; he also admitted into evidence returns of two other persons not connected with the case and not testifying. All this converted the indictment into evidence, and unfairly prejudiced petitioners in their defense. The record was not cleared of such prejudice, and this was clearly reversible error. *Bollenbach* v. *United States*, 66 S. Ct. 402 (326 U.S. 607, 614-15; 90 L. ed. 350); *Speiser* v. *Randall*, 78 S. Ct. 1332 (357 U.S. 513; 2 L. ed. (2d) 1460).

B. An instruction that a named co-conspirator (Maggie Cotton) was not entitled to her claim as a matter of law, and that her return was willfully and intentionally stated excessively over the supporting facts, was prejudicially erroneous, especially when, on objection, the trial judge emphasized his opinion; and such error was not cured by brief admonition to the jury that they could decide the fact questions. There is basis for grave doubt that, without this error, substantial evidence would remain to support the verdict; there is graver doubt that the error did

not influence the verdict. This was a reversible error. *Quercia* v. *United States*, 53 S. Ct. 397 (289 U.S. 466, 470, 472; 77 L. ed. 1321); *Krulewitch* v. *United States*, 69 S. Ct. 716 (336 U.S. 440; 93 L. ed. 790); *Katteakos* v. *United States*, 66 S. Ct. 1239 (328 U.S. 750; 90 L. ed. 1557).

C. The instructions as to guilt and reasonable doubt were so one-sided as to be tantamount to a directed verdict of guilt; the instruction as to farm income was not alone one-sided, but very wide of the actual requirements of law; opportunity to clear the record of such prejudice was rejected summarily by the trial judge and the record is barren of any affirmative showing for either minimizing or clearing the record of the gun barrel effect. This is reversible, and ought not to be sustained. *Binn* v. *United States*, 66 S. Ct. 1172 (328 U.S. 633, 639; 90 L. ed. 1485); *United States* v. *Murdock*, 54 S. Ct. 223 (290 U.S. 389, 394, 397; 78 L. ed. 381).

D. The trial judge instructed the jury that the law presumes one intends the ordinary and natural consequences of his acts, whereas guilty intent is the essence of the crime charged under the statute here. The charge, in these circumstances, took from the jury their responsibility of determining intent as to the falsity of returns—any document in law not substantially correct being false—and intent to defraud. This is not permissible and was reversible error. *Morisette* v. *United States*, 72 S. Ct. 240 (342 U.S. 246, 273-76; 96 L. ed. 288).

II. Conflicts with other circuits

A. When affirming, the FIFTH Circuit approved the selection by the trial judge of the inference the jury must make as to the return of Maggie Cotton. That practice is declared by the SECOND and SIXTH Circuits to be a prohibited and, therefore, reversible one. *United States* v. *Valenti*, 134 F.(2d) 362, 364 (CA-2; 1943) cert. den. 63 S. Ct. 1387 (319 U.S. 761; 87 L. ed. 1712), accepted "fully"